

## J. Y. Interpretation No.288 (December 13, 1991) \*

**ISSUE:** Is the provision of the Commodity Tax Act requiring that the person punishable by a fine lodge a deposit with the taxing authority or furnish a form of security before he can file an appeal with the court in conflict with the Constitution?

**RELEVANT LAWS:**

Article 16 of the Constitution (憲法第十六條); Article 20 of the Commodity Tax Act (貨物稅條例第二十條).

**KEYWORDS:**

deposit (保證金), fine (罰鍰), person liable to penalty (受處分人), confiscation (沒入), guaranty executed by a reliable business establishment (殷實商保), right of appeal (上訴／抗告權).\*\*

**HOLDING:** Article 20, Paragraph 3, of the Commodity Tax Act before its amendment made on January 24, 1990, provided: "In filing an appeal, the person liable to penalty shall lodge a deposit with the competent taxing authority in sum equal to the fine payable or the value of the commodity subject to confis-

**解釋文：**中華民國七十九年一月二十四日修正前之貨物稅條例第二十条第三項：「受處分人提出抗告時，應先向該管稅務稽徵機關提繳應納罰鍰或其沒入貨價之同額保證金，或覓具殷實商保」之規定，使未能依此規定辦理之受處分人喪失抗告之機會，係對人民訴訟權所為不必要之限制，與憲法第十六

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\* Translated by Raymond T. Chu.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

cation or furnish a guaranty therefor to be executed by a reliable business establishment.” To the extent that this provision deprives the person liable to penalty who is unable to meet such requirement of the opportunity to file an appeal, it imposes an unnecessary restraint on the people’s right of instituting legal proceedings, and is thus contrary to the purpose of Article 16 of the Constitution in protecting the people’s right of instituting legal proceedings people.

**REASONING:** The people’s right of instituting legal proceedings protected by Article 16 of the Constitution includes the right of appeal in case of dissatisfaction with the judgment or ruling made by a lower court, and may not be restricted except where it is necessary as specified by Article 23 of the Constitution. The Commodity Tax Act before its amendment made on January 24, 1990, provided in Article 20, Paragraph 1: “All cases of penalty of fine and confiscation under this Act shall be referred by the relevant taxing authorities to the court for a ruling thereon.” And Paragraph 2 of the

條保障人民訴訟權之意旨有所牴觸。

**解釋理由書：**憲法第十六條所保障人民之訴訟權，應包括對下級法院裁判不服時之上訴或抗告權，除有憲法第二十三條所定必要情形外，不得加以限制。中華民國七十九年一月二十四日修正前之貨物稅條例第二十條第一項前段規定：「依本條例應處罰鍰及沒入貨物之處分者，由該管稅務稽徵機關移送法院裁定」。同條第二項規定，「受處分人不服法院裁定時，得於接到法院裁定通知書十日內提出抗告」，但同條第三項則規定：「受處分人提出抗告時，應先向該管稅務稽徵機關提繳應納罰鍰或其沒入貨價之同額保證金，或覓具殷實商保」。此項規定雖為防止受處分人

same article states: "If the person liable to penalty is dissatisfied with the ruling delivered by the court, he may file an appeal within ten days from the receipt of the court ruling." But in contrast, Paragraph 3 thereof provided: "In filing an appeal, the person liable to penalty shall lodge a deposit with the competent taxing authority in sum equal to the fine payable or the value of the commodity subject to confiscation or furnish a guaranty therefor to be executed by a reliable business establishment." While this provision is designed to prevent the person liable to penalty from instituting a frivolous appeal for the purpose of delaying the payment of fine, the institution of appeal has no effect in staying the enforcement of the penalty. Accordingly, to the extent that the provision of Paragraph 3 quoted above deprives the person liable to penalty who is unable to meet such requirement of the opportunity to file an appeal, it imposes an unnecessary restraint on the people's right of instituting legal proceedings, and is thus contrary to the purpose of Article 16 of the Constitution in protecting the people's right of instituting legal proceedings.

任意提起抗告，拖延繳納罰鍰而設；惟抗告並無停止執行之效力，是上述第三項之規定，使未能依此項規定辦理之受處分人喪失抗告之機會，係對人民訴訟權所為不必要之限制，與憲法第十六條保障人民訴訟權之意旨有所牴觸。